

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL092508)**

**INTRODUCTION**

On 9/25/08, the Nevada Superintendent of Public Instruction received a complaint dated 9/23/08 from a parent alleging violations in the special education program of a student with disabilities attending elementary school in the Clark County School District (CCSD). An investigation team was appointed to examine the allegations that the CCSD: 1) did not provide the student a laptop computer; 2) did not provide an instructional assistant with the skills required by the student's Individualized Educational Program (IEP); and, 3) did not permit a special program teacher's assistant to attend the student's IEP although the parents had invited her.

The parent also made allegations that the district failed to comply with the Americans with Disabilities Act (ADA) standards with respect to the school building and retaliated against them by transferring the student's special program teacher's assistant to another school. The parent was notified that the Nevada Department of Education (NDE) did not have jurisdiction through the special education complaint process to investigate those allegations and that the responsibility to investigate such allegations fell under Section 504 of the Rehabilitation Act (Section 504) and the ADA-Title II. The parent was provided with local and federal contact information to pursue these two allegations under Section 504 and ADA-Title II.

**COMPLAINT ISSUES**

The allegations in the complaint raised the following issues under the jurisdiction of the NDE:

- ISSUE 1:** Whether the CCSD implemented the student's IEP, specifically with regard to providing:
- a. Access to a laptop computer
  - b. An instructional assistant
- ISSUE 2:** Whether the CCSD was obligated to permit the special program teacher's assistant to participate in the development of the student's annual IEP because of the parents' invitation to her to join the IEP committee.

**PERSONS INTERVIEWED**

The investigation team interviewed the following persons:

- Parent
- Compliance monitor
- Principal
- Coordinator, Assistive Technology Services (AT coordinator)
- Southeast Region Lead for AT Services (AT region lead)
- 2007/2008 regular education teacher
- 2008/2009 regular education teacher
- Special program teacher's assistant
- Instructional assistant

## **DOCUMENTS REVIEWED**

The investigation team reviewed the following documents:

1. Student's 2/7/07 IEP
2. Student's 4/3/08 IEP
3. Student's first trimester report card for 2008/2009 school year
4. Student's 2007/2008 report card
5. Student's 2006/2007 progress reports
6. Student's attendance records for the 2008/2009 school year
7. School calendar for the 2008/2009 school year
8. Assistive technology (AT) summary report dated 5/26/06
9. AT memo dated 12/18/07
10. AT Services Re-Referral Request dated 4/3/08
11. AT services assessment review request dated 4/21/08
12. E-mails regarding AT services dated from 4/11/08 through 10/9/08
13. Note from primary resources teacher to parents (late March or early April 2008)
14. Student status record for 4/2/08 through 9/10/08
15. Parent letters to district staff dated 5/1/08, 5/14/08 and 6/5/08
16. District letter to parent dated 9/23/08
17. Parent letter to district dated 9/27/08

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811 (9<sup>th</sup> Cir. September 6, 2007)
- U.S. Department of Education, Office of Special Education Programs (OSEP) Policy Letter (2003)

## **FINDINGS OF FACT**

This investigation involved an elementary school student with cerebral palsy attending school in the CCSD during the 2007/2008 and 2008/2009 school years. A review of documents, as well as interviews with the parent, the principal, the compliance monitor, the AT coordinator, the AT region lead, 2007/2008 and 2008/2009 regular education teachers, the special program teacher's assistant and the instructional assistant revealed the following facts.

### **Laptop Computer**

The student's annual IEP meeting was held on 4/3/08. The present levels of performance (PLOPs) in the 4/3/08 IEP state that due to deficits, the student "requires the support of a laptop computer to complete writing assignments with peers." There is no other mention of a laptop computer in the 4/3/08 IEP. The parents and the 2007/2008 regular education teacher report that there was a great deal of discussion about the student's need for a laptop computer by the 4/3/08 IEP committee and the fact that using the current computers in the classroom isolated the student from her peers.

The 4/3/08 IEP under the Supplementary Aids and Services section requires that: 1) the student be able to use a computer to complete all written assignments; 2) the student will not be isolated

from her peers when using a computer to complete written assignments; and, 3) the student will be allowed to use any materials or devices recommended by OT/PT/AT. Recommendations for equipment and devices for physical and occupational therapy by the PT and OT respectively, were not at issue in this complaint. The goals and objectives address basic locomotor movement, activities in physical education, safety in fitness activities and exercises, speech and language, and independence in the classroom. There are no academic goals and objectives in the 4/03/08 IEP.

The 4/3/08 IEP committee members also completed an AT Services Re-Referral Request at the 4/3/08 IEP meeting (4/3/08 Re-Referral Request) requesting a laptop for the student. The AT coordinator, in response to the 4/3/08 Re-Referral Request, stated that until Light Tech items, such as a word processor were used "it would be in contradiction to best practices to look at other solutions."

The AT coordinator and the AT region lead reported that word processors are not technically computers. However, they stated that in order to meet the requirements of the 4/3/08 IEP for the student to complete written assignments and not be isolated from her peers, word processors were equivalent to a computer with the exception of the size of the screens, which were smaller.

A word processor was provided to the student following the 4/3/08 IEP. The word processor was small enough to sit on the student's desk so that she could sit with her peers and not be isolated from them while completing her written assignments. The 2007/2008 regular education teacher and the special program teacher's assistant reported that the student used the word processor to complete written assignments during the remainder of the 2007/2008 school year.

For the 2007/2008 school year, the student received a grade of A in Reading, Mathematics, Science/Health and Social Studies and a grade of B in Writing. The 2007/2008 regular education teacher explained that the grade of B in Writing was due to the content of the student's writing and not related to her ability to work on the word processor.

On 9/10/08, in response to comments that the word processor screen was too small, a new word processor was provided for the student and is the one she currently uses (current word processor). The current word processor has a bigger screen and also sits on the student's desk enabling the student to complete her written assignments and not be isolated from her peers. The parents and the regular education classroom teacher reported that there were some initial difficulties as the student adjusted to the current word processor. However, the regular education teacher and the instructional assistant reported that adjustments were made to the current word processor to resolve those problems very quickly and there have not been any ongoing problems. The 2008/2009 regular education teacher and the instructional assistant reported that the student has completed all her written assignments on the current word processor with the exception of one week during the 2008/2009 school year when the power cord was missing. For that week, the student worked on the previous word processor to complete her written assignments.

The 2008/2009 regular classroom teacher and principal reported that there are also classroom computers available for the student to use for writing assignments. The computers are next to a row of students' desks. The student, as well as other students in the classroom, currently uses the computers for free time and to practice typing.

Subsequent to the filing of the complaint the student received the first trimester progress report for the 2008/2009 school year. The student met all standards and received a grade of A in Reading, Science/Health, and Social Studies and a grade of B in Mathematics.

#### Instructional Assistant

The student's 4/3/08 IEP also required that the student have "adult assistance" to: 1) utilize outdoor playground equipment; 2) participate in all specials as needed; 3) safely use the bathroom; 4) safely maneuver the classroom when walking without the walker; 5) open some containers, eat certain foods, and clean up during lunch; and, 6) safely evacuate the school building during a fire/evacuation drill. The 4/3/08 IEP does not include a requirement that the student have a specific adult, or just one adult, who will provide services to her nor does it require that any of the assistants have any specific training.

The parents stated that the student was not being provided with instructional assistants who were trained to work with students with special needs and they expressed their desire to have the student's former special program teacher's assistant work with the student. In addition, the parents reported that they did not believe the instructional assistant who spends the most time with the student (primary instructional assistant), was trained in First Aid.

CCSD administrative staff reported that all instructional assistants receive needed training from the teachers in whose classes they work, from specialists as necessary and at staff development days. In addition, CCSD administrative staff reported that all instructional assistants are certified in First Aid, CPR and AED (automatic external defibrillator). The primary instructional assistant, in addition to being certified in First Aid, CPR and AED, has been formally trained by the district to work with special education students specifically in activities of daily living such as toileting, feeding, transferring and mobility. These are areas in the 4/3/08 IEP that require adult assistance to the student.

Subsequent to the filing of the complaint, the parents complained that the school was rotating instructional assistants so that the student was not having one specific person working exclusively with her. The principal reported that the instructional assistants are being rotated for a limited period of time to ensure that there are instructional assistants available who know the student and can work effectively with her when the primary instructional assistant is not available.

#### Participation of Special Program Teacher's Assistant in 4/3/08 IEP

The parents invited the special program teacher's assistant to attend the 4/3/08 IEP meeting because they felt she had knowledge and expertise with respect to the student that she could contribute to the 4/3/08 IEP committee. The 4/3/08 IEP meeting was scheduled to meet during the school day. The parents were informed that the special program teacher's assistant would not be able to attend the meeting but it was suggested that the special program teacher's assistant could pass on any information or concerns that she felt should be discussed at the 4/3/08 IEP meeting to the student's teacher who would be part of the IEP committee. There was no issue with regard to the attendance of the required members of the 4/3/08 IEP committee.

The compliance monitor stated that the policy of the district is to ensure that all required members of IEP committees attend IEP meetings and the district does not routinely make other district personnel available for IEP meetings. There is no state policy that addresses this issue.

## **CONCLUSIONS OF LAW AND REASONS**

- ISSUE 1:** Whether the CCSD implemented the student's IEP, specifically with regard to providing access to:
- a.** A laptop computer
  - b.** An instructional assistant

This complaint concerned allegations that the district did not provide the student a laptop computer or provide an instructional assistant with the skills required by the student's IEP.

State regulations at NAC §388.281.6(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the [IEP] committee..." However, "...when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811 (9<sup>th</sup> Cir., September 6, 2007).

### **a. A laptop computer**

In this case, while there were reports that the 4/3/08 IEP committee discussed the need for a laptop computer for the student there is no written requirement in the 4/3/08 IEP that the student have a laptop computer. The student's 4/3/08 IEP requires that the student have a computer available to her to complete all written assignments and that the student not be isolated from her peers when using the computer. The 4/3/08 IEP also requires that the student be provided with the equipment and devices recommended by the PT/OT/AT. The word processors for the student were recommended by the AT coordinator.

During the 2007/2008 school year, following the completion of the 4/3/08 IEP the student was provided a word processor which allowed her to successfully complete her writing assignments at her desk and not be isolated from her peers. There also was a computer in the classroom in close proximity to the student's desk and available for her to use if desired. Again, during the 2008/2009 school year, the student has a word processor on her desk with which she successfully completes her written assignments and is not isolated from her peers. In addition, she has nearby computers available to use in the classroom should she wish to use them to complete any written assignments.

While the word processors available to the student are not technically computers, they meet the requirement of the 4/3/08 IEP to enable her to complete her written assignments and not be isolated from her peers. In addition, the word processors were recommended by district AT staff pursuant to the 4/3/08 IEP. Further, the student received above average grades. Although the district did not provide a laptop computer, it did provide her with word processors that met the requirements of the 4/3/08 IEP and access to computers that did not isolate her from her peers. Therefore, the provision of word processors did not result in a material failure of the district to implement the 4/3/08 IEP.

*Therefore, the investigation team concluded that the CCSD did not violate state regulations with regard to implementing the student's IEP, specifically with regard to providing access to a computer as specified in the student's IEP.*

**b. An instructional assistant**

In this case, the student's 4/3/08 IEP does not contain specific training requirements for the persons providing adult assistance, does not name a specific person to provide assistance, and does not limit the provision of the assistance to one person. The district did provide adult assistance to the student in accordance with the requirements of the 4/3/08 IEP. While the district did provide a primary instructional assistant to the student who has CPR, First Aid and AED training, it was not obligated to do so nor does this create an additional requirement in the student's IEP for all adult assistants to hold these certifications. Although the parents may prefer a particular staff person, the district is only required to provide "the services and instruction deemed necessary for the pupil by the [IEP] committee."

*Therefore, the investigation team concluded that the CCSD did not violate state regulations with regard to implementing the student's IEP, specifically with regard to providing adult assistance as specified in the student's IEP.*

**ISSUE 2:** Whether the CCSD was obligated to permit the special program teacher's assistant to participate in the development of the student's annual IEP because of the parents' invitation to her to join the IEP committee.

This complaint concerned an allegation that CCSD withdrew the parents' invitation to the student's former instructional assistant to attend the IEP committee meeting.

NAC §388.281(3) permits the parents to "... ask such other persons who have knowledge or special expertise concerning the pupil, including the pupil and persons who provide related services to the pupil, as the parents ... deem appropriate to join the committee."

A policy letter from OSEP (104 LRP 1214 (OSEP 2003)) clarifies that "The Part B regulations do not address the public agency's responsibility to make an employee of that agency who is not a required participant in the IEP meeting available for IEP meetings ... Thus, whether or not an employee of the school district who is not required ... to be part of the IEP team may be required to attend or be charged leave to attend the IEP meeting is a matter of State and/or local policy."

In this case there was no dispute about the attendance of the required members of the 4/3/08 IEP committee. However, the parents invited the special program teacher's assistant who worked with the student for the 2007/2008 school year to participate in the 4/3/08 IEP committee meeting because of her knowledge of and expertise regarding the student. The district did not allow the special program teacher's assistant to attend the 4/3/08 meeting that was held during the school day. The district did suggest that she could provide information about the student to the regular education teacher who was a required member of the IEP committee.

There is no state policy addressing this issue. The district as a matter of policy does not routinely make non-required district personnel available for IEP meetings. While the parents had the right to invite the special program teacher's assistant to attend the 4/3/08 IEP meeting, in accordance with local policy the district was not obligated to make the special program teacher's assistant available because she was not a required member of the 4/3/08 IEP committee.

*Therefore, the investigation team concluded that the CCSD did not violate state regulations when it did not permit the special program teacher's assistant to participate in the development of the student's annual IEP because of the parents' invitation to her to join the IEP committee.*